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# **Business Regulation Committee**

**Tuesday, January 10, 2006  
9:45 AM  
Reed Hall (102 HOB)**

# **Committee Meeting Notice**

## **HOUSE OF REPRESENTATIVES**

**Speaker Allan G. Bense**

### **Business Regulation Committee**

**Start Date and Time:** Tuesday, January 10, 2006 09:45 am

**End Date and Time:** Tuesday, January 10, 2006 11:45 am

**Location:** Reed Hall (102 HOB)

**Duration:** 2.00 hrs

#### **Consideration of the following bill(s):**

HB 95 CS Alcoholic Beverages by Henriquez

HB 159 Regulation of Real Estate Appraisers by McInvale

HB 317 Stand-Alone Bars by Domino

Update by the Department of Business and Professional Regulation regarding developing alternatives to licensure and consumer protection in the areas of home inspection and mold inspection and remediation.

**NOTICE FINALIZED on 12/30/2005 11:41 by REFFITT.NIKKI**



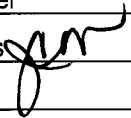

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 95 CS  
**SPONSOR(S):** Henriquez  
**TIED BILLS:**

Alcoholic Beverages

**IDEN./SIM. BILLS:** SB 1154

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N, w/CS	Kramer	Kramer
2) Business Regulation Committee		Morris 	Liepshutz 
3) Justice Council			
4)			
5)			

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### SUMMARY ANALYSIS

An alcohol vaporizing device, also known as an "alcohol without liquid" machine or AWOL, allows users to inhale alcohol in the form of vapor. HB 95 CS makes it a first degree misdemeanor to sell or offer for sale an alcohol vaporizing device. A second conviction within 5 years will be a third degree felony. A person who purchases or uses an alcohol vaporizing device will be subject to a fine of \$250.

The provisions of this bill will have an insignificant fiscal impact on state revenue expenditures and collections.

The bill will take effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill prohibits the use of an alcohol vaporizing device.

#### B. EFFECT OF PROPOSED CHANGES:

An alcohol vaporizing device, which is also known as an "alcohol without liquid" machine or AWOL, allows users to inhale alcohol in the form of vapor. The device works by pouring an alcoholic spirit into a diffuser capsule in the alcohol vaporizing device. The alcohol is absorbed by oxygen bubbles, and the user inhales the alcohol vapor. Alcohol vaporizing devices are being marketed on the internet as a low calorie and hangover free way to consume alcohol. There does not appear to be any evidence supporting either of these claims. There are obvious health risks associated with consuming a large amount of alcohol in a short amount of time.

HB 95 CS creates s. 562.61, F.S. which provides that no person shall purchase, sell, offer for sale, or use an alcohol vaporizing device. The bill makes it a first degree misdemeanor to sell or offer for sale an alcohol vaporizing device. A person who violates the provision by selling or offering for sale an alcohol vaporizing device after having been previously convicted of such offense within the past 5 years commits a third degree felony. A person who purchases or uses an alcohol vaporizing device shall be subject to a \$250 fine.

The term "alcohol vaporizing device" is defined as "any device, machine, or process which mixes spirits, liquor or other alcohol products with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation."

It is unknown how many, if any, of these machines are in commercial or private use in Florida at this time. The device is available for sale on eBay<sup>1</sup> and direct from the U.S. supplier at a cost of \$299 for single user machines to \$2895 for a commercial 4-person simultaneous use machine.<sup>2</sup>

There is currently no federal or state regulation of these devices. However, legislation has been introduced in Congress that would prohibit the sale of these alcohol vaporizing machines prior to pre-market approval by the Food and Drug Administration.<sup>3</sup> In addition legislation similar to HB 95 CS was introduced in several states and has been implemented in Arizona, Colorado, Indiana, Kansas, Maine, Nevada, and Tennessee.<sup>4</sup>

The bill provides that these provisions will take effect July 1, 2006.

#### C. SECTION DIRECTORY:

Section 1. Creates s. 562.61, F.S. relating to alcohol vaporizing devices.

Section 2. Provides effective date of July 1, 2006.

<sup>1</sup> Last checked January 3, 2006, listed three devices for sale ranging in price from \$210 to \$299 each.

<sup>2</sup> See <http://www.awolusa.com/page-3.htm> last visited January 3, 2006.

<sup>3</sup> HR 613 by Representative Bob Beauprez of Colorado.

<sup>4</sup> Information provided by the Distilled Spirits Council of the United States, a trade association representing producers and marketers of distilled spirits.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

On February 22, 2005, the Criminal Justice Impact Conference determined that HB 241, which was identical to this bill, would have an insignificant prison bed impact on the Department of Corrections.

There will be minimal costs associated with training of Division of Alcoholic Beverages and Tobacco law enforcement agents.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This legislation will prohibit the sale or use of certain alcohol vaporizing devices in the state of Florida. It is unknown how many, if any, of these devices are currently in use commercially or privately in the state.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

It may be somewhat unclear whether the definition of an alcohol vaporizing device provided in this legislation could encompass devices such as perfume atomizers, aerosol air fresheners, disinfectants, etc. or medical devices such as nebulizers and vaporizers, etc.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The original bill contained provisions relating to malt beverage tastings. The Criminal Justice Committee adopted an amendment that removed this language from the bill.

HB 95

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CS

## CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to alcoholic beverages; creating s.  
7 562.61, F.S.; providing a definition of the term "alcohol  
8 vaporizing device"; prohibiting the sale, offer for sale,  
9 purchase, or use of machines or devices which vaporize  
10 alcohol; providing penalties; providing a fine; providing  
11 an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Section 562.61, Florida Statutes, is created to  
16 read:

17 562.61 Sale, offer for sale, purchase, or use of alcohol  
18 vaporizing devices prohibited.--

19 (1) For purposes of this section, the term "alcohol  
20 vaporizing device" means any device, machine, or process which  
21 mixes spirits, liquor, or other alcohol products with pure  
22 oxygen or other gas to produce a vaporized product for the  
23 purpose of consumption by inhalation.

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CODING: Words stricken are deletions; words underlined are additions.

hb0095-01-c1



HB 95

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24        (2) A person may not sell, offer for sale, purchase, or  
25        use an alcohol vaporizing device.

26        (3) (a) Any person who violates this section by selling or  
27        offering for sale an alcohol vaporizing device commits a  
28        misdemeanor of the first degree, punishable as provided in s.  
29        775.082 or s. 775.083. Any person who violates this section by  
30        selling or offering for sale an alcohol vaporizing device after  
31        having been previously convicted of such an offense within the  
32        past 5 years commits a felony of the third degree, punishable as  
33        provided in s. 775.082 or s. 775.083.

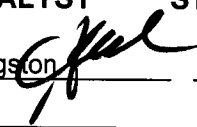

34        (b) Any person who violates this section by purchasing or  
35        using an alcohol vaporizing device shall be subject to a fine of  
36        \$250.

37        Section 2. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 159                      Regulation of Real Estate Appraisers  
**SPONSOR(S):** McInvale and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	_____	<u>Livingston</u> 	<u>Liepshutz</u> 
2) <u>State Administration Appropriations Committee</u>	_____	_____	_____
3) <u>Commerce Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

The Florida Real Estate Appraisal Board (board) under the Division of Real Estate within the Department of Business and Professional Regulation (DBPR) administers regulation of real estate appraisers. The bill addresses several provisions of the real estate appraisers' statutes, part II of chapter 475, F.S.

The Appraisal Qualifications Board ("AQB") acts as the entity charged with the adoption of minimum federal standards for real estate appraiser licensure. A person licensed in Florida must meet these federal standards in order to appraise property that has federal financial backing. The bill requires the board to prescribe education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the AQB in order to be qualified as a "residential appraiser" or as a "general appraiser."

The bill specifies the duties for supervisory appraisers to perform when supervising the work of trainee appraisers. The bill provides for statutory definitions of "direct supervision," "supervisory appraiser," and "training." These definitions are designed to guide supervisory appraisers when supervising the work of trainee appraisers.

The bill prohibits a supervising appraiser from being employed by a person who is in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

Current law, as a part of the definition of "licensed appraiser," creates an automatic repeal of the appraiser license requirement and thus creates a gradual phase out of this regulatory category. Operating as an appraiser would be authorized under the categories of certified general appraiser or certified residential appraiser in lieu of the "license" category. The bill modifies various references to the terms license, licensing and licensed to clarify the application of these terms to currently licensed individuals.

No significant fiscal impact is anticipated as a result of the provisions of the bill.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

- |                                      |       |       |        |
|--------------------------------------|-------|-------|--------|
| 1. Reduce government?                | Yes[] | No[]  | N/A[X] |
| 2. Lower taxes?                      | Yes[] | No[]  | N/A[X] |
| 3. Expand individual freedom?        | Yes[] | No[X] | N/A[]  |
| 4. Increase personal responsibility? | Yes[] | No[]  | N/A[X] |
| 5. Empower families?                 | Yes[] | No[]  | N/A[X] |

For any principle that received a "no" above, please explain:

3. Expand individual freedom - The bill prohibits a supervising appraiser from being employed by a person in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

#### B. EFFECT OF PROPOSED CHANGES:

Regulation of real estate appraisers is established under part II of chapter 475, F.S. The board under the Division of Real Estate of the DBPR administers this program. Regulation is designed to assure the minimal competency of real estate appraisers in order to protect the public from potential financial harm. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination.

Several themes are prevalent in the bill and are supported by various changes to statutory text.

##### Present Situation

##### Compliance with changing federal standards

The definitions section of part II of chapter 475, F.S., provides that an "appraisal report" is "any written or oral analysis, opinion, or conclusion issued by an appraiser relating to the nature, quality, value, or utility of a specific interest in, or aspect of, identified real property...." The definition specifically states, "However, in order to be recognized in a federally related transaction, an appraisal report must be written."

"Federally related transaction" is defined as "any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser." Additionally, "appraisal foundation" or "foundation" is defined by statute to mean "the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois."

The Appraisal Qualifications Board ("AQB") is located within the Appraisal Foundation and acts as the entity charged with the adoption of minimum federal standards for real estate appraiser licensure. Therefore, a person licensed in Florida must meet these federal standards in order to appraise property that has federal financial backing. The AQB has adopted changes that will become effective January 1, 2008 to the minimum qualification criteria for appraisers.

The bill deletes the statutory criteria to be certified as a "residential appraiser" [2,500 hours of experience and 120 classroom hours of education] or as a "general appraiser" [3,000 hours of experience and 180 classroom hours of education].

In order to be qualified as a certified “residential appraiser” or as a “general appraiser,” the bill requires the board to “prescribe education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation.” This language is designed to allow changes at the state level to reflect future changes in federal qualifications for licensure and not conflict with the potential challenge as an unlawful delegation of legislative authority. See section A. CONSTITUTIONAL ISSUES and section B. RULE-MAKING AUTHORITY of this analysis.

#### Present Situation

##### **Supervisor/trainee direct supervision requirements**

The current definition section of part II of chapter 475, F.S., defines “supervisory appraiser” to mean a licensed appraiser or a certified residential or general appraiser who directs the supervision of one or more registered “trainees.” The definition, gives the board rule authority to limit the number of trainees whose work a supervisor may oversee and limit, by rule, the geographic area within which a supervisor may work. The terms “direct supervision” and “training” are not currently defined.

Section 475.6221, F.S., requires “the primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision and training to the registered trainee appraiser.” This section further provides that “the role and responsibility of the supervisory appraiser is determined by rule of the board.”

The bill specifies requirements for supervisory appraisers to perform when supervising the work of trainee appraisers. The bill provides for statutory definitions of “direct supervision,” “supervisory appraiser,” and “training.” These definitions are designed to guide supervisory appraisers when supervising the work of trainee appraisers.

The bill defines “direct supervision” as “the degree of supervision overseeing the work of a trainee appraiser” [allowing] “control over and detailed professional knowledge of the work being done.” The definition continues and provides that “direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board.”

The bill defines “training” to mean “the process of providing for and making available to a registered trainee appraiser, under direct supervision” [which is newly defined in the bill] “, a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical skills.”

#### Present Situation

##### **Supervisor/trainee business relationship restrictions**

In addition to the direct supervision requirements noted above, s. 475.6221, F.S. also requires that “a registered trainee real estate appraiser may only receive compensation through or from the primary supervisory appraiser.”

The bill amends s. 475.6221, F.S., to prohibit a supervising appraiser to be employed by a person in training or a company owned by the trainee. The bill specifies that “a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest.”

The bill also amends s. 475.612, F.S., to repeat the requirement that “a registered trainee appraiser may only receive compensation from his or her authorized certified or licensed appraiser.”

#### Present situation

## Licensing nomenclature

Section 475.612, F.S., currently prohibits a person from using the title "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," or any abbreviation or words to that effect, or issue an appraisal report **"in connection with any federally related transaction"** unless that person is certified, licensed, or registered by the DBPR.

Current law, as a part of the definition of "licensed appraiser," creates an automatic repeal of the appraiser license requirement and thus creates a phase out of this regulatory category. The definition provisions prohibit the DBPR from issuing any more licenses for the licensed appraiser category after July 1, 2003. The renewal of licenses would continue but no new licenses will be issued. Reference to the term license would continue until all licenses expire for failure to renew or are revoked under disciplinary proceedings. Operating as an appraiser would be authorized under the categories of certified general appraiser or certified residential appraiser in lieu of the "license" category.

The bill deletes the reference **"in connection with any federally related transaction"** and, as a result, the prohibition against using the specified titles of "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," would apply to all real estate appraisal transactions.

The bill modifies various references to the terms license, licensing and licensed to clarify the application of these terms to the dwindling universe of these licensed practitioners.

### C. SECTION DIRECTORY:

Section 1. Amends s. 475.611, F.S., relating to definitions.

Section 2. Amends s. 475.612, F.S., to address reporting and valuation services, as well as, the direct payment of compensation to certified or licensed appraisers.

Section 3. Amends s. 475.615, F.S., to revise qualifications for registration or certification.

Section 4. Amends s. 475.617, F.S., to address education and experience requirements.

Section 5. Amends s. 475.6221, F.S., to prohibit a trainee from employing a supervisor appraiser.

Section 6. Amends s. 475.6222, F.S., to require a primary or secondary supervisor appraiser to provide training, in addition to direct supervision, to an appraiser trainee.

Section 7. Amends s. 475.623, F.S. to require registration of a firm or business name in addition to the location of their operations.

Section 8. Effective date - July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No significant economic impact on the private sector is anticipated.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The DBPR points out that a "primary focus of the bill is making sufficient changes to the current state regulatory schemes in order to comply with future federal requirements for the licensing of appraisers." In part, the bill is designed to reflect revisions to federal appraiser licensing requirements under Florida rule making procedures in an attempt to avoid the potential constitutional question of the unlawful delegation of legislative authority.

House bill drafting services looks to the following guidelines when reviewing legislation authorizing authority to track federal guidelines:

Federal laws or rules in existence at the time of the adoption of the statute may be used as standards and guidelines, but the Legislature may not prospectively adopt future federal law. *Brazil v. Division of Administration, Department of Transportation*, 347 So.2d 755 (Fla. 1st DCA 1977), concerned a statute that gave the Department of Transportation the power to enforce restrictions on billboards "subject to current federal regulations." The District Court of Appeal held that it would be an unconstitutional delegation of legislative power for the Legislature to adopt in advance any federal act or federal administrative rule. The court therefore applied a limiting construction to the statute, construing the term "current" to mean in effect as of the date of the adoption of the Florida statute.

The Florida Supreme Court has considered this issue in the context of criminal prohibitions of controlled substances. In *State v. Welch*, 279 So.2d 11 (Fla. 1973), the court held that a provision of the drug abuse law that included within controlled substances "all drugs controlled by drug abuse laws of the United States, now or in the future" was an unlawful delegation of legislative power in that it attempted to incorporate by reference future federal legislation. The court applied a limiting construction to the statute that had the effect of invalidating the incorporation of future federal acts.

Also see *Florida Industrial Commission et al. v. State ex rel. Orange State Oil Co.*, 21 So.2d 599 (Fla. 1945).

#### B. RULE-MAKING AUTHORITY:

The bill specifies that

"To be certified as a residential appraiser [and to be certified as a general appraiser], an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by the board. The board shall prescribe education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation."

The authority of the board may be clearer if the bill specifies that prescribed education and experience requirements be adopted by rule.

The DBPR notes that "definitions are provided to define specific legal requirements for supervisory appraisers to perform when supervising the work of trainee appraisers. In the case of "training" the definition requires a planned, prepared, and coordinated program or routine of instruction and education, but does not specifically vest the Florida Real Estate Appraisal Board with the authority to promulgate rules."

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

See B. above.

Additionally, various definitions specified in part II of chapter 475, F.S., currently include substantive provisions within definitional text. The bill also includes substantive authority within definitional text. As a common practice substantive provisions, such as rule making authority, are included in statutory text rather than as a part of the definitional meaning of specified terms or phrases. See definitions at line 89 (direct supervision), line 103 (licensed appraiser), and line 115 (supervisory appraiser).

The DBPR states that "changes in Section 5 located on page 111 [actually page 11]. Line 298 provide that a supervisory appraiser may [actually "may not"] be employed by a trainee or by a company, firm, or partnership in which the trainee has an interest. However, this language does not address situations where the relationship between the supervisory appraiser and the trainee resembles an independent contractor status."

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES



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A bill to be entitled

An act relating to regulation of real estate appraisers; amending s. 475.611, F.S.; revising and providing definitions; amending s. 475.612, F.S.; revising requirements relating to work performed by persons who are not certified, licensed, and registered; providing requirements relating to issuance of appraisal reports and compensation of appraisers, including trainees; amending s. 475.615, F.S., relating to qualifications for registration, licensure, or certification; revising education and experience requirements; amending s. 475.617, F.S.; removing obsolete provisions establishing education and experience requirements for licensure as an appraiser; revising education and experience requirements for certification as a residential appraiser or general appraiser; amending s. 475.6221, F.S.; prohibiting supervisory appraisers from certain employment; amending s. 475.6222, F.S.; requiring supervisory appraisers to provide direct training to registered trainee appraisers; amending s. 475.623, F.S.; requiring appraisers to furnish their firm or business name and any change in that name to the Department of Business and Professional Regulation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 475.611, Florida Statutes, is amended to read:

475.611 Definitions.--

(1) As used in this part, the term:

(a) "Appraisal" or "appraisal services" means the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. "Appraisal assignment" denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.

2. "Analysis assignment" denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.

3. "Appraisal review assignment" denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser's appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser's opinion of value.

(b) "Appraisal Foundation" or "foundation" means the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

56 (c) "Appraisal report" means any communication, written or  
57 oral, of an appraisal, appraisal review, appraisal consulting  
58 service, analysis, opinion, or conclusion relating to the  
59 nature, quality, value, or utility of a specified interest in,  
60 or aspect of, identified real property, and includes any report  
61 communicating an appraisal analysis, opinion, or conclusion of  
62 value, regardless of title. However, in order to be recognized  
63 in a federally related transaction, an appraisal report must be  
64 written.

65 (d) "Appraisal review" means the act or process of  
66 developing and communicating an opinion about the quality of  
67 another appraiser's appraisal, appraisal report, or work.

68 (e) "Appraisal subcommittee" means the designees of the  
69 heads of the federal financial institutions regulatory agencies  
70 established by the Federal Financial Institutions Examination  
71 Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

72 (f) "Appraiser" means any person who is a registered  
73 trainee real estate appraiser, licensed real estate appraiser,  
74 or a certified real estate appraiser. An appraiser renders a  
75 professional service and is a professional within the meaning of  
76 s. 95.11(4)(a).

77 (g) "Board" means the Florida Real Estate Appraisal Board  
78 established under this section.

79 (h) "Certified general appraiser" means a person who is  
80 certified by the department as qualified to issue appraisal  
81 reports for any type of real property.

82 (i) "Certified residential appraiser" means a person who  
83 is certified by the department as qualified to issue appraisal

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reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

(j) "Department" means the Department of Business and Professional Regulation.

(k) "Direct supervision" means the degree of supervision required of a supervisory appraiser overseeing the work of a registered trainee appraiser by which the supervisory appraiser has control over and detailed professional knowledge of the work being done. Direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board.

~~(l)(k)~~ "Federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser.

~~(m)(l)~~ "Licensed appraiser" means a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. After July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

~~(n)(m)~~ "Registered trainee appraiser" means a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a

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licensed or certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

(o)~~(n)~~ "Supervisory appraiser" means a licensed appraiser, a certified residential appraiser, or a certified general appraiser responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers. The board, by rule, shall determine the responsibilities of a supervisory appraiser, the geographic proximity required, the minimum qualifications and standards required of a licensed or certified appraiser before she or he may act in the capacity of a supervisory appraiser, and the maximum number of registered trainee appraisers to be supervised by an individual supervisory appraiser.

(p) "Training" means the process of providing for and making available to a registered trainee appraiser, under direct supervision, a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical skills.

(q)~~(e)~~ "Uniform Standards of Professional Appraisal Practice" means the most recent standards approved and adopted by the Appraisal Standards Board of the Appraisal Foundation.

(r)~~(p)~~ "Valuation services" means services pertaining to aspects of property value and includes such services performed by certified appraisers, registered trainee appraisers, and others.

139        ~~(s)~~~~(q)~~ "Work file" means the documentation necessary to  
140 support an appraiser's analysis, opinions, and conclusions.

141        Section 2. Section 475.612, Florida Statutes, is amended  
142 to read:

143        475.612 Certification, licensure, or registration  
144 required.--

145        (1) A person may not use the title "certified real estate  
146 appraiser," "licensed real estate appraiser," or "registered  
147 trainee real estate appraiser," or any abbreviation or words to  
148 that effect, or issue an appraisal report ~~in connection with any~~  
149 ~~federally related transaction~~, unless such person is certified,  
150 licensed, or registered by the department under this part.  
151 However, the work upon which an appraisal report is based may be  
152 performed by a person who is not a certified or licensed  
153 appraiser or registered trainee appraiser if the work report is  
154 supervised and approved, and the report is signed, by a  
155 certified or licensed appraiser who has full responsibility for  
156 all requirements of the report and valuation service. Only a  
157 certified or licensed appraiser may issue an appraisal report  
158 and receive direct compensation for providing valuation services  
159 for the appraisal report. A registered trainee appraiser may  
160 only receive compensation from his or her authorized certified  
161 or licensed appraiser.

162        (2) This section does not preclude a Florida licensed real  
163 estate broker, sales associate, or broker associate who is not a  
164 Florida certified or licensed real estate appraiser ~~or~~  
165 ~~registered trainee real estate appraiser~~ from providing  
166 valuation services for compensation. Such persons may continue

167 to provide valuation services for compensation so long as they  
168 do not represent themselves as certified, licensed, or  
169 registered under this part.

170 (3) This section does not apply to a real estate broker or  
171 sales associate who, in the ordinary course of business,  
172 performs a comparative market analysis, gives a price opinion,  
173 or gives an opinion of the value of real estate. However, in no  
174 event may this comparative market analysis, price opinion, or  
175 opinion of value of real estate be referred to or construed as  
176 an appraisal.

177 (4) This section does not prevent any state court or  
178 administrative law judge from certifying as an expert witness in  
179 any legal or administrative proceeding an appraiser who is not  
180 certified, licensed, or registered; nor does it prevent any  
181 appraiser from testifying, with respect to the results of an  
182 appraisal.

183 (5) This section does not apply to any full-time graduate  
184 student who is enrolled in a degree program in appraising at a  
185 college or university in this state, if the student is acting  
186 under the direct supervision of a certified or licensed  
187 appraiser and is engaged only in appraisal activities related to  
188 the approved degree program. Any appraisal report by the student  
189 must be issued in the name of the supervising individual who is  
190 responsible for the report's content.

191 (6) This section does not apply to any employee of a  
192 local, state, or federal agency who performs appraisal services  
193 within the scope of her or his employment. However, this  
194 exemption does not apply where any local, state, or federal

195 agency requires an employee to be registered, licensed, or  
196 certified to perform appraisal services.

197 Section 3. Subsection (1) of section 475.615, Florida  
198 Statutes, is amended to read:

199 475.615 Qualifications for registration, licensure, or  
200 certification.--

201 (1) Any person desiring to act as a registered trainee  
202 appraiser or as a licensed or certified appraiser must make  
203 application in writing to the department in such form and detail  
204 as the board shall prescribe. Each applicant must be at least 18  
205 years of age and hold the level of education and experience  
206 required for the type of license being sought ~~a high school~~  
207 ~~diploma or its equivalent~~. At the time of application, a person  
208 must furnish evidence satisfactory to the board of successful  
209 completion of required education and evidence of required  
210 experience, if any.

211 Section 4. Section 475.617, Florida Statutes, is amended  
212 to read:

213 475.617 Education and experience requirements.--

214 (1) To be registered as a trainee appraiser, an applicant  
215 must present evidence satisfactory to the board that she or he  
216 has successfully completed at least 75 hours of approved  
217 academic courses in subjects related to real estate appraisal,  
218 which shall include coverage of the Uniform Standards of  
219 Professional Appraisal Practice from a nationally recognized or  
220 state-recognized appraisal organization, career center,  
221 accredited community college, college, or university, state or  
222 federal agency or commission, or proprietary real estate school



223 that holds a permit pursuant to s. 475.451. The board may  
224 increase the required number of hours to not more than 100  
225 hours. A classroom hour is defined as 50 minutes out of each 60-  
226 minute segment. Past courses may be approved on an hour-for-hour  
227 basis.

228 ~~(2) To be licensed as an appraiser, an applicant must~~  
229 ~~present evidence satisfactory to the board that she or he:~~

230 ~~(a) Has 2 years of experience in real property appraisal~~  
231 ~~as defined by rule.~~

232 ~~(b) Has successfully completed at least 90 classroom~~  
233 ~~hours, inclusive of examination, of approved academic courses in~~  
234 ~~subjects related to real estate appraisal, which shall include~~  
235 ~~coverage of the Uniform Standards of Professional Appraisal~~  
236 ~~Practice from a nationally recognized or state-recognized~~  
237 ~~appraisal organization, career center, accredited community~~  
238 ~~college, college, or university, state or federal agency or~~  
239 ~~commission, or proprietary real estate school that holds a~~  
240 ~~permit pursuant to s. 475.451. The board may increase the~~  
241 ~~required number of hours to not more than 120 hours. A classroom~~  
242 ~~hour is defined as 50 minutes out of each 60-minute segment.~~  
243 ~~Past courses may be approved by the board and substituted on an~~  
244 ~~hour-for-hour basis.~~

245 ~~(2)(3)~~ To be certified as a residential appraiser, an  
246 applicant must present satisfactory evidence to the board that  
247 she or he has met the minimum education and experience  
248 requirements prescribed by the board. The board shall prescribe  
249 education and experience requirements that meet or exceed the

250 real property appraiser qualification criteria established by  
251 the Appraisal Qualifications Board of the Appraisal Foundation. +

252 ~~(a) Has at least 2,500 hours of experience obtained over a~~  
253 ~~24-month period in real property appraisal as defined by rule.~~

254 ~~(b) Has successfully completed at least 120 classroom~~  
255 ~~hours, inclusive of examination, of approved academic courses in~~  
256 ~~subjects related to real estate appraisal, which shall include~~  
257 ~~coverage of the Uniform Standards of Professional Appraisal~~  
258 ~~Practice from a nationally recognized or state-recognized~~  
259 ~~appraisal organization, career center, accredited community~~  
260 ~~college, college, or university, state or federal agency or~~  
261 ~~commission, or proprietary real estate school that holds a~~  
262 ~~permit pursuant to s. 475.451. The board may increase the~~  
263 ~~required number of hours to not more than 165 hours. A classroom~~  
264 ~~hour is defined as 50 minutes out of each 60-minute segment.~~  
265 ~~Past courses may be approved by the board and substituted on an~~  
266 ~~hour-for-hour basis.~~

267 ~~(3)(4)~~ To be certified as a general appraiser, an  
268 applicant must present evidence satisfactory to the board that  
269 she or he has met the minimum education and experience  
270 requirements prescribed by the board. The board shall prescribe  
271 education and experience requirements that meet or exceed the  
272 real property appraiser qualification criteria established by  
273 the Appraisal Qualifications Board of the Appraisal Foundation. +

274 ~~(a) Has at least 3,000 hours of experience obtained over a~~  
275 ~~30-month period in real property appraisal as defined by rule.~~

276 ~~(b) Has successfully completed at least 180 classroom~~  
277 ~~hours, inclusive of examination, of approved academic courses in~~

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278 ~~subjects related to real estate appraisal, which shall include~~  
 279 ~~coverage of the Uniform Standards of Professional Appraisal~~  
 280 ~~Practice from a nationally recognized or state-recognized~~  
 281 ~~appraisal organization, career center, accredited community~~  
 282 ~~college, college, or university, state or federal agency or~~  
 283 ~~commission, or proprietary real estate school that holds a~~  
 284 ~~permit pursuant to s. 475.451. The board may increase the~~  
 285 ~~required number of hours to not more than 225 hours. A classroom~~  
 286 ~~hour is defined as 50 minutes out of each 60-minute segment.~~  
 287 ~~Past courses may be approved by the board and substituted on an~~  
 288 ~~hour-for-hour basis.~~

289       ~~(4)(5)~~ Each applicant must furnish, under oath, a detailed  
 290 statement of the experience for each year of experience she or  
 291 he claims. Upon request, the applicant shall furnish to the  
 292 board, for its examination, copies of appraisal reports or file  
 293 memoranda to support the claim for experience.

294       Section 5. Subsection (3) is added to section 475.6221,  
 295 Florida Statutes, to read:

296       475.6221 Employment of and by registered trainee real  
 297 estate appraisers.--

298       (3) A supervisory appraiser may not be employed by a  
 299 trainee or by a company, firm, or partnership in which the  
 300 trainee has a controlling interest.

301       Section 6. Section 475.6222, Florida Statutes, is amended  
 302 to read:

303       475.6222 Supervision and training of registered trainee  
 304 appraisers.--The primary or secondary supervisory appraiser of a  
 305 registered trainee appraiser shall provide direct supervision

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306    and training to the registered trainee appraiser. The role and  
307    responsibility of the supervisory appraiser is determined by  
308    rule of the board.

309            Section 7.   Section 475.623, Florida Statutes, is amended  
310    to read:

311            475.623   Registration of firm or business name and office  
312    location.--Each appraiser registered, licensed, or certified  
313    under this part shall furnish in writing to the department each  
314    firm or business name and address from which she or he operates  
315    in the performance of appraisal services. Each appraiser must  
316    notify the department of any change of firm or business name and  
317    any change of address within 10 days on a form provided by the  
318    department.

319            Section 8.   This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 159**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

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1 Council/Committee hearing bill:

2 Representative(s) McInvale offered the following:

3  
4 **Amendment**

5 Line(s) 131 before the period insert:  
6 as determined by rule of the board  
7  
8

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 159**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

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Council/Committee hearing bill:

Representative(s) McInvale offered the following:

**Amendment**

Remove line(s) 248 and 270 and insert on lines 248 and  
270:  
requirements prescribed by rule of the board. The board shall  
prescribe by rule

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 317


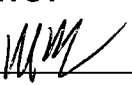
Stand-Alone Bars

**SPONSOR(S):** Domino

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 600

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee		 Morris 	Liepshutz
2) Commerce Council			
3)			
4)			
5)			

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### SUMMARY ANALYSIS

For purposes of ensuring compliance with provisions of the Clean Indoor Air Act limiting those indoor work areas where smoking is allowed, Florida law requires certain alcoholic beverage establishments that also serve food [stand-alone bars] to annually submit to the Division of Alcoholic Beverages and Tobacco [Division] in the Department of Business and Professional Regulation an affidavit that certifies compliance with the 10 percent threshold limitation for food sales. Thereafter, every three years after the initial designation as a stand alone bar, the licensee must submit an "agreed upon procedures report" prepared by a certified public accountant that attests to the licensee's compliance with the food sales limitation for the preceding 36-month period.

This legislation repeals the requirement that a stand-alone bar submit a CPA-prepared agreed upon procedures report to the Division every three years after receiving the designation as a stand-alone bar. The legislation retains the requirement that a stand-alone bar submit an affidavit to the Division certifying compliance with the food sales limitation on an annual basis.

The provisions of this legislation do not appear to have any fiscal impact on state or local government revenue expenditures or collections.

The bill provides that the act will take effect upon becoming a law.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government**—This bill eliminates a requirement that certain alcoholic beverage establishments [stand-alone bars] submit an “agreed upon procedures report” prepared by a certified public accountant to the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Article X, Section 20 – Smoking in Enclosed Indoor Workplaces**

At the November 2002 General Election, voters approved Constitutional Amendment No. 6, to prohibit tobacco smoking in enclosed indoor workplaces. The stated purpose of this constitutional revision, codified as s. 20, art. X, Florida Constitution, was to protect people from the health hazards of second-hand tobacco smoke by prohibiting workplace smoking. The constitutional amendment provided limited exceptions to the prohibition on indoor smoking including an exception for “stand-alone bars”. The constitutional amendment required the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” Implementing legislation [HB 63A – Chapter No. 2003-398, LOF] was subsequently enacted by the 2003 Legislature.

##### **Food Service in Stand-Alone Bars**

The constitutional amendment defined a stand-alone bar to mean:

...any place of business devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, *if any, is merely incidental* to the consumption of any such beverage; and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. [Emphasis supplied]

Section 561.695, Florida Statutes, created three specific requirements for a stand-alone bar. First, a stand alone bar must be “devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises.” Second, the serving of food, if any, must be “merely incidental” to the consumption of alcoholic beverages. Third, the business must not be “located within, [or] share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue.”

An important caveat of the stand-alone bar definition is the requirement that the serving of food must be “merely incidental” to the consumption of alcoholic beverages. Section 561.695(5), F.S., defines “merely incidental” as a limit that a stand-alone bar derive no more than 10 percent of its gross revenue from the sale of food. Further, s. 561.695(5)(b), F.S., prohibits stand-alone bars from serving free-food, but does allow customary bar snacks to be served without charge.

## Reporting Requirement for Stand-Alone Bars

To verify compliance with the food sales limitation, s. 561.695(5), F.S., requires that after the initial designation in order to continue to qualify as a stand-alone bar the licensee must submit to the division, on or before the licensee's annual renewal date, an affidavit that certifies compliance. Moreover, subsection (6) of s. 561.695, requires that every third year after the initial designation and on or before the annual license renewal, a stand-alone bar that serves food, other than pre-packaged items, must file with the DABT, in a format established by rule of the division, an "agreed upon procedures report" prepared by a Florida Certified Public Accountant attesting to licensee's compliance with the food sales limitation for the preceding 36-month period. The first triennial report is due by September 30, 2006, which is the first applicable renewal date for designated stand-alone bars.

Following passage of the implementing legislation, the Florida Institute of Certified Public Accountants (FICPA) assigned a task force of CPAs that practice in the area of tax administration to review and comment on the legislation and the DBPR proposed rules.<sup>1</sup> The FICPA has since expressed concern regarding the required agreed upon procedures report.

According to the Florida Institute of Certified Public Accounts, an "agreed upon procedures report" is defined in section 201 of the Attestation Standards of the American Institute of Certified Public Accountants [AICPA] as:

An agreed-upon procedures engagement is one in which a practitioner is engaged by a client to issue a report of findings based on specific procedures performed on subject matter. The client engages the practitioner to assist specified parties in evaluating subject matter or an assertion as a result of a need or needs of the specified parties. Because the specified parties require that findings be independently derived, the services of a practitioner are obtained to perform procedures and report his or her findings. The specified parties and the practitioner agree upon the procedures to be performed by the practitioner that the specified parties believe are appropriate. Because the needs of the specified parties may vary widely, the nature, timing, and extent of the agreed-upon procedures may vary as well; consequently, the specified parties assume responsibility for the sufficiency of the procedures since they best understand their own needs. In an engagement performed under this section, the practitioner does not perform an examination or a review, as discussed in section 101, and does not provide an opinion or negative assurance. Instead, the practitioner's report on agreed-upon procedures should be in the form of procedures and findings.

As a consequence of the role of the specified parties in agreeing upon the procedures performed or to be performed, a practitioner's report on such engagements should clearly indicate that its use is restricted to those specified parties.

Further, Section 101 of the Attestation Standards of the American Institute of Certified Public Accountants defines an "examination" in which an opinion is given as:

In an attest engagement designed to provide a high level of assurance (referred to as an examination), the practitioner's objective is to accumulate sufficient evidence to restrict attestation risk to a level that is, in the practitioner's professional judgment, appropriately low for the high level of assurance that may

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<sup>1</sup> Public hearings were requested by the Bowling Centers Association of Florida on rules implementing the Clean Indoor Air Act, including rules addressing the records required to maintain the stand alone bar designation. Subsequently, a Petition challenging the validity of the proposed rules was filed on May 20, 2005. A hearing was held before the Division of Administrative Hearings on August 30, 2005. On December 7, 2005, the administrative law judge entered a final order declaring all of the proposed rules as valid exercises of delegated legislative authority and denied the Bowling Centers' petition.

be imparted by his or her report. In such an engagement, a practitioner should select from all available procedures—that is, procedures that assess inherent and control risk and restrict detection risk—any combination that can restrict attestation risk to such an appropriately low level.

According to the FICPA, in an agreed-upon procedures engagement or report, a certified public accountant (CPA) does not render an opinion regarding the sufficiency of the records provided by the client, including the accuracy and completeness of the records. In the context of the statute and rules, a CPA could only certify that the records provided by the stand-alone bar to a CPA reflect a stated percentage of gross food sales. The FICPA maintains that a Florida CPA could be disciplined by the Board of Accountancy within the DBPR for a violation of professional standards if, in the course of preparing the report, the CPA observes irregularities in the client's records, e.g., that the client is withholding pertinent records from the CPA, or the CPA determines that the client may have committed fraud or other malfeasance such as tax evasion and does not note them in the report. Further, the FICPA has expressed the concern that what the CPA is attesting to may not actually meet the Legislature's original expectation.

The FICPA maintains that the statutes and rules do not adequately address the licensee's required record retention and other internal control procedures while CPA standards of professional conduct require great specificity regarding the form in which records must be kept, e.g. whether a CPA can rely upon records maintained in an electronic format. Moreover the FICPA is concerned that the statutes or rules do not adequately identify what specific steps or procedures are required by the CPA when addressing the lack of internal controls and the resultant reliability of the records.

The FICPA believes that a CPA's performance of an agreed upon procedures report may likely be a violation of professional standards, and, consequently, the FICPA will advise its CPA members to refrain from performing the service for stand-alone bars.

The bill does not appear to have a fiscal impact on state or local revenue expenditures or collections.

The bill provides that the act will take effect upon becoming a law.

#### C. SECTION DIRECTORY:

Section 1. Deletes subsection (6) of s. 561.695, F.S., and renumbers subsections (7) through (9).

Section 2. Provides that the act will take effect upon becoming a law.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

According to the Division of Alcoholic Beverages and Tobacco as of January 3, 2006, there are 1013 stand-alone bars that serve food.<sup>2</sup> These stand alone bars will no longer be required to incur the cost of a CPA to complete an "agreed upon procedures report." The cost savings to these businesses is indeterminate.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not grant any new rule-making authority. The bill will require repeal of existing rules as to the method and form for the report.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>2</sup> According to the Division of Alcoholic Beverages and Tobacco there are 731 stand alone bars that serve no food.

1 A bill to be entitled

2 An act relating to stand-alone bars; amending s. 561.695,  
3 F.S.; removing a requirement that licensed vendors file a  
4 procedures report regarding compliance with certain food  
5 service limitations; providing an effective date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9 Section 1. Subsections (6) through (9) of section 561.695,  
10 Florida Statutes, are amended to read:

11 561.695 Stand-alone bar enforcement; qualification;  
12 penalties.--

13 ~~(6) Every third year after the initial designation, on or~~  
14 ~~before the licensee's annual license renewal, the licensed~~  
15 ~~vendor must additionally provide to the division an agreed upon~~  
16 ~~procedures report in a format established by rule of the~~  
17 ~~department from a Florida certified public accountant that~~  
18 ~~attests to the licensee's compliance with the percentage~~  
19 ~~requirement of s. 386.203(11) for the preceding 36-month period.~~  
20 ~~Such report shall be admissible in any proceeding pursuant to s.~~  
21 ~~120.57. This subsection does not apply to a stand-alone bar if~~  
22 ~~the only food provided by the business, or in any other way~~  
23 ~~present or brought onto the premises for consumption by patrons,~~  
24 ~~is limited to nonperishable snack food items commercially~~  
25 ~~prepackaged off the premises of the stand-alone bar and served~~  
26 ~~without additions or preparation; except that a stand-alone bar~~  
27 ~~may pop popcorn for consumption on its premises, provided that~~

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~~the equipment used to pop the popcorn is not used to prepare any other food for patrons.~~

(6)~~(7)~~ The Division of Alcoholic Beverages and Tobacco shall have the power to enforce the provisions of part II of chapter 386 and to audit a licensed vendor that operates a business that meets the definition of a stand-alone bar as provided in s. 386.203(11) for compliance with this section.

(7)~~(8)~~ Any vendor that operates a business that meets the definition of a stand-alone bar as provided in s. 386.203(11) who violates the provisions of this section or part II of chapter 386 shall be subject to the following penalties:

(a) For the first violation, the vendor shall be subject to a warning or a fine of up to \$500, or both;

(b) For the second violation within 2 years after the first violation, the vendor shall be subject to a fine of not less than \$500 or more than \$2,000;

(c) For the third or subsequent violation within 2 years after the first violation, the vendor shall receive a suspension of the right to maintain a stand-alone bar in which tobacco smoking is permitted, not to exceed 30 days, and shall be subject to a fine of not less than \$500 or more than \$2,000; and

(d) For the fourth or subsequent violation, the vendor shall receive a 60-day suspension of the right to maintain a stand-alone bar in which tobacco smoking is permitted and shall be subject to a fine of not less than \$500 or more than \$2,000 or revocation of the right to maintain a stand-alone bar in which tobacco smoking is permitted.

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55        ~~(8)~~(9) The division shall adopt rules governing the  
56 designation process, criteria for qualification, required  
57 recordkeeping, auditing, and all other rules necessary for the  
58 effective enforcement and administration of this section and  
59 part II of chapter 386. The division is authorized to adopt  
60 emergency rules pursuant to s. 120.54(4) to implement the  
61 provisions of this section.

62        Section 2. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. HB 317

COUNCIL/COMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

1 Council/Committee hearing bill: Business Regulation Committee  
2 Representative(s) Domino offered the following:  
3

4 **Amendment (with directory and title amendments)**

5 Between line(s) 12 and 13 insert:  
6

7 (5) After the initial designation, to continue to qualify  
8 as a stand-alone bar the licensee must provide to the division  
9 annually, on or before the licensee's annual renewal date, an  
10 affidavit that certifies, with respect to the preceding 12-month  
11 period, the following:

12 (a) No more than 10 percent of the gross revenue of the  
13 business is from the sale of food consumed on the licensed  
14 premises as defined in s. 386.203(11).

15 (b) Other than customary bar snacks as defined by rule of  
16 the division, the licensed vendor does not provide or serve food  
17 to a person on the licensed premises without requiring the  
18 person to pay a separately stated charge for food that  
19 reasonably approximates the retail value of the food.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

(c) The licensed vendor conspicuously posts signs at each entrance to the establishment stating that smoking is permitted in the establishment.

The division shall establish by rule the format of the affidavit required by this subsection. A licensed vendor shall not knowingly make a false statement on the affidavit required by this subsection. In addition to the penalties provided in subsection (7), a licensed vendor who knowingly makes a false statement on the affidavit required by this subsection may be subject to suspension or revocation of the vendor's alcoholic beverage license under s. 561.29.

===== D I R E C T O R Y A M E N D M E N T =====

Remove line(s) 9 and insert:

Section 1. Subsections (5) through (9) of section 561.695,

===== T I T L E A M E N D M E N T =====

Remove line(s) 3 and insert:

F.S.; providing a penalty for a licensed vendor who knowingly makes a false statement on an annual compliance affidavit; removing a requirement that licensed vendors file a

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